



Draft

**SCOTTSDALE CITY COUNCIL
JOINT TASK FORCE ON THE ARTS
PUBLIC MEETING**

TUESDAY JUNE 20, 2006

**SCOTTSDALE CULTURAL COUNCIL ANNEX CONFERENCE ROOM
MERCADO VERDE BUILDING, 7373 E. SCOTTSDALE MALL, SUITE 18
SCOTTSDALE, AZ 85251**

PRESENT: Wayne Ecton, Councilman
Ron McCullagh, Councilman
Louise Roman, Cultural Council Board of Trustees
Dick Hayslip, Cultural Council Board of Trustees
Gail Bradley, Cultural Council Board of Trustees

ABSENT: Betty Drake, Councilmember

STAFF: Frank Jacobson
Michelle Korf
Donna Bronski
Valerie Vadala Homer
Art Rullo
John Lusardi
Bob Wood

ALSO PRESENT: Lindsey Butler, Scottsdale Tribune

CALL TO ORDER/ROLL CALL

The meeting of the Joint Task Force on the Arts was called to order by Co-Chairman Hayslip at 11:37 a.m. A formal roll call confirmed the presence of Task Force members as noted above. Introductions of other attendees followed.

GENERAL BUSINESS

1. Approval of Minutes

COUNCILMAN ECTON MOVED ACCEPTANCE OF THE MINUTES OF THE MEETING OF MAY 24, 2006. MS. ROMAN SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).

2. Art in Private Development (AIPD) Ordinance 2018

Ms. Korf gave a presentation, reminding the Task Force of the discussion related to the limitations of the existing ordinances. She noted Mr. Lusardi's experience with art in private development ordinances from his time in San Jose.

Limitations of the existing Ordinance include: the SPA Board's weak authority and the confusion regarding the respective roles of the SPA Board and the Development Review Board. The ordinance also makes no provision for maintenance of the artwork. The auditor has expressed concern regarding the use of public art staff resources at no cost to developers. Also, compliance is currently tied to the occupancy process. Tying it to the permitting process could be more effective. Ms. Korf noted that artwork should be monitored to ensure that it is not removed or altered.

Ms. Korf noted that the San Jose model for a new AIPD ordinance could be helpful. It references a Public Art Master Plan. It might also be more effective if the ordinance were removed from the Scottsdale Zoning Code. Mr. John Lusardi, Long Range Planning Director, advised that in his experience most public art ordinances are not a part of the zoning ordinances. This enables the program to receive more attention and have better oversight. If there is a future need to amend the ordinance, this is more easily accomplished with a stand-alone ordinance.

A discussion initiated by Ms. Korf ensued on ideas for a new ordinance. Mr. Lusardi has suggested that rather than considering zoning categories; it might be better to consider land use instead. He explained that the discussion should focus on the appropriate land uses where public art should be included. Typically these include mixed use and commercial projects and some industrial projects. Multi-family housing is exempt, although he noted there could be some projects where public art would be appropriate. The ordinance could also apply to the entire City.

Ms. Roman asked how form-based zoning plays into this scenario. Mr. Lusardi explained that form-based zoning emphasizes the relationship with the environment. Typically public art is not included in a form-based code.

Councilman Ecton asked whether basing the threshold on dollars is difficult, due to cost overruns. Mr. Lusardi replied that a base valuation is established for each project. This can, in fact, be easier to evaluate than it is on a square footage basis. Councilman Ecton commented that the base valuation could become a bone of contention. Ms. Korf pointed out that the staff could explore both options and present a comparison to the Task Force in the fall.

Co-chairman Hayslip enquired whether government buildings would be subject to the Ordinance. Mr. Lusardi noted that if a building falls under Federal regulations the City could not regulate it. However, city projects could be regulated under the updated Art in Public Places ordinance.

Ms. Korf noted that an idea for the new ordinance deals with fees the developer would pay to compensate for staff time spent on private projects.

Ms. Bradley asked Ms. Homer to elaborate on staff's role in these cases. Ms. Homer described staff's work with the Waterfront development. Ms. Korf summarized that staff

solicited and reviewed proposals on behalf of the developer. In the Waterfront case staff also facilitated a contract between the developer and the artist who was finally selected. The scope of staff involvement in smaller projects may be limited, but the services provided are still significant and time-consuming. Ms. Homer remarked that the staff expertise results in quality decisions being made. The Waterfront developer is gifting the Lipsky sculpture back to Scottsdale, which is why staff is involved in facilitating the contract. Ms. Bradley commented that it is to the advantage of the public art program to have staff involved. Perhaps along with the fee structure, an incentive could be offered to encourage developers to use city staff. Ms. Homer noted that typically professional arts consultants charge 15 percent of the value of the artwork. Other programs across the country use fee for services.

Mr. Lusardi described the San Jose model. The city requires the developer to contribute an amount of money towards art. That money goes into the public art program, which controls the selection of the art through a public art committee, which includes artists. The developer has input into where the artwork will be sited. The city public art program is responsible for installation and maintenance. The artwork belongs to the city and cannot be removed or changed without city permission. Vice Mayor McCullagh commented that the San Jose model is stringent. He likes the idea that the city owns the artwork so that it cannot be removed. Mr. Lusardi continued, noting that public art must be accessible to the public at all times. If placed inside a hotel, for example, it would have to be in the lobby. Councilman Ecton recalled the case of the W Hotel. Vice Mayor McCullagh was a member of the DRB at the time and was instrumental in ensuring that the art would be accessible to the public. Vice Mayor McCullagh said in his opinion it is very important to locate public art in public places. If it is inside a private business, people feel inhibited and not inclined to go view it. Ms. Homer reviewed the original plans with the W Hotel, which extended artist Otto Rigan's artwork to the exterior of the building.

Mr. Jacobson asked about the performing arts, noting there are precedents elsewhere for performance space in mixed-use developments. Ms. Homer noted that the LA County Museum was largely financed by development agreements.

Ms. Bradley inquired how the development community received the San Jose ordinance. Mr. Lusardi explained that the ordinance initially focused in the downtown area and expanded. The city first established a percent for art program for city projects. Developers are most concerned with knowing the cost of their project. Requirements impacting cost factors need to be very clear. Typically the artwork would be sited near a developer's project or as part of a gateway into an area. San Jose allows art to be incorporated into the building as an architectural feature. This gives the developer an offset on the cost of building. There can be conflict between the architect and the artist, so accomplishing this can be a challenge.

Ms. Bradley opined that the City should be sensitive to the development community and give them some input and access into the process. Mr. Lusardi commented that the developer could have a representative on the committee that selects stipulated artwork.

Ms. Roman commented that this leaves no opportunity to curate an art collection. Perhaps if the developer is not interested in participating in the selection, their contribution might be assessed differently. Their contribution could be paid into an in-lieu fund and spending decisions would be made by arts professionals. Mr. Lusardi

shared that San Jose had to establish a city budget for art maintenance. The San Jose ordinance has since been amended so that a portion of developer contributions can be used for maintenance and administration costs.

Councilman Ecton opined that rather than charging developers a fee for staff services, this should be built into the overall fee structure. The SPA Board adds immeasurable value to the project. A discussion ensued on the Main Street Plaza project. It was noted that the public art contribution is comparatively low because the residential portion of the development was exempted under the current ordinance. Councilman Ecton suggested that if the new ordinance included the residential portion of mixed use developments, there would be opportunities to use the funds generated to build the Western Museum. Ms. Korf commented that based on the San Jose model, they would look at ending the exemption for the residential portion of mixed-use developments. Mr. Lusardi suggested they model some projects to see evaluations of what the contributions would be. Otherwise he cautioned there could be a negative response from the development community. If a Public Art Master Plan is established, it becomes simpler to make decisions on how to spend in lieu funds that developers contribute.

Ms. Bronski reminded the meeting that the broader the program gets, the more legal issues will surface.

Mr. Jacobson asked Ms. Bronski whether nexus can be established so that the options are there to benefit the community as a whole. Ms. Homer replied that the current ordinance requires funds be expended in the downtown area. Mr. Lusardi remarked that they could create a nexus within a particular area, such as the Airpark.

Ms. Korf suggested that Code Enforcement staff might participate in the ongoing monitoring of the collection in an attempt to address the issue of pieces moving or disappearing.

Mr. Jacobson noted that if the threshold is set at \$500,000, the developer's contribution would be \$5,000. He challenged Task Force members to think of ways to avoid having a large number of very small projects, which could result from this threshold.

Ms. Homer agreed that maintenance is a real issue, citing a fountain in Tempe by an eminent public artist that rarely functions because there was nothing to require the developer to operate it. Mr. Jacobson noted that the City's enforcement codes could be adapted to solve this issue. Councilman Ecton noted this would work as long as the developer owns the artwork. If it belongs to the City the City is responsible for maintenance and operation. Ms. Bronski cautioned that the City's code enforcement powers are specifically outlined in State statute. She suggested that perhaps a sinking fund might be set up that could evolve into an endowment to pay for maintenance. Ms. Roman suggested that the program could be structured so that the maintenance costs are upfront.

Ms. Korf displayed a list of questions dealing with the extent of control the City should have over the public art program and a list of process issues.

Co-Chairman Hayslip reported that he and Ms. Korf met and suggested that it would be worthwhile to meet with developers for their ideas. A discussion ensued and the consensus of the meeting was to pursue this initiative. Ms. Korf stated that staff will

meet with key people over the summer. Staff will also obtain an initial legal review of the draft ordinances before the September meeting and draft a communication plan addressing public outreach.

3. Framework for New Ordinances

Ms. Korf presented a list of points raised at previous meetings, explaining that this is a starting point to build the framework for the new Ordinances. Co-Chairman Hayslip asked her whether there other points upon which staff need guidance and input.

Mr. Jacobson noted a question regarding making a formal division in the collection between SMOCA and a municipal collection. Some donors will not give to the Museum because they perceive it as owned by the City. He noted discussions with the Museum in the past regarding establishing a trust for SMOCA. Doing this would make it possible for SMOCA to accept donations that otherwise might not be offered. Mr. Jacobson suggested revisiting this matter. In reply to a question from Vice Mayor McCullagh, Mr. Jacobson elaborated that potential donors of some major works have indicated a mistrust of government, fearing that the City might auction off the holdings. He added, however, that many museum collections across the country are held by government entities.

4. Renewal of the Master Agreement

Ms. Korf noted that there was interest in discussing the approach to the renewal of the Master Agreement before the Task Force's summer hiatus.

Councilman Ecton noted with the change of direction caused by Mr. Jacobson's impending retirement, the Cultural Council would doubtless reconsider how the organization should be managed. At the same time, the City is considering how best to fund the Cultural Council. He questioned whether it is realistic to discuss the Master Agreement during this transition period. Ms. Bradley noted that the Task Force might provide an opportunity to generate outlines and thoughts. Councilman Ecton opined that perhaps the Task Force is a good venue to explore thoughts about the Master Agreement, rather than trying to draft a document or make decisions at this stage.

Ms. Roman asked what the timeline is for the renewal of the Master Agreement. Ms. Korf replied that City Council will consider authorization of Year 4 of a five-year extension to the agreement at their meeting tonight. Co-Chairman Hayslip commented he believes that the Board of the Cultural Council will try to move quickly to resolve transition questions. They hope to hold a retreat in July. Councilman Ecton remarked that in his mind the real deadline is to be ready for the next budget cycle.

5. Future Meetings

Co-Chairman Hayslip reminded the Task Force members they would reconvene in September. Discussion ensued and it was agreed that the next meeting of the Task Force would take place on Thursday, September 7, 2006.

UPCOMING MEETINGS

The next meeting of the Task Force will take place on Thursday, September 7, 2006.

PUBLIC COMMENTS

None.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 12:45 p.m.

Respectfully submitted,
A/V Tronics, Inc.